



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
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August 14, 2006

The Honorable Michael Chertoff
Secretary
United States Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

We write jointly to commend you for the recent personnel changes you have made in the Immigration and Customs Enforcement ("ICE") office here in Maricopa County, express our frustration with the previous lack of attention and resources dedicated by Homeland Security to Maricopa County, and offer constructive suggestions for ways we can jointly work to stem the flow of illegal immigration and the resulting crime from the human smuggling trade.

As you well know, Maricopa County has become a national transit hub for human smuggling rings that have taken advantage of federal policies that funnel illegal immigration traffic into Arizona. Each of us has spoken directly to you and your Department leadership about this problem, shared evidence of known smuggling operations, and offered to help in detaining, housing, and transporting illegal immigrants that our local law enforcement officials have apprehended. Under the prior leadership of the local ICE office, however, we received only initially positive statements that never materialized into any concrete action by your Department.

The previous Maricopa County ICE SAC was reluctant to share even basic information regarding apprehensions, border crossing deaths, drug confiscation statistics, or the number of agents and manhours available to combat the problem. He categorically refused to provide us this information. His hostility to state and local law enforcement, coupled with a "we know better than you" attitude, was counter to the mission of his agency and did serious damage to relations between our State and your Department. We are greatly relieved and encouraged that he is being replaced.

We are also concerned that ICE refuses to pick up and deport undocumented immigrants who have been convicted under Arizona's human smuggling statute. ICE's refusal to do so forces Maricopa County Sheriff's deputies to drive them to the border

The Honorable Michael Chertoff
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and turn them over to Border Patrol. Forcing County Sheriff's deputies to do a job that should be performed by ICE is a major source of friction between the Sheriff's office and ICE.

We hope that the new leadership in the local ICE office will come with a renewed commitment to work cooperatively with state and local law enforcement. We also hope it will come with new resources, including the funding that Congress approved for state and local law enforcement through the Stonegarden program (but that remains stuck in a bureaucratic morass), and a lifting of the hiring freeze your Department imposed for ICE in this state.

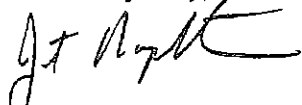
Securing our border requires more than on-the-border enforcement. It also requires concerted resources in transit hubs, such as Maricopa County, of our border states.

The smugglers know this, and it is important that your local ICE officials do too.

We commend President Bush for his recent actions to secure our Border and provide long overdue attention and resources to this problem. But the President's plan can work only with a comprehensive strategy for interior enforcement that must start and succeed in the major cities of border states like Arizona. This must be a federal responsibility and DHS must play a significant role. We strongly urge you to eliminate hiring freezes for ICE agents in Arizona and move quickly to double the number of agents in Maricopa County. We also ask you to join us in our call for more adequate funding of programs relating to the U.S.-Mexico border crisis as the administration develops the President's FY08 budget.

Finally, we implore you to see to it personally that the new ICE leadership here is instilled with the same cooperative, can-do spirit that we have seen from you when we have dealt with you directly. We greatly appreciate your quick understanding of our circumstances and security issues. ICE must now follow your lead and be given the personnel, resources and attention that this State requires to truly secure our Border.

Yours very truly,



Janet Napolitano
Governor



Joe Arpaio
Maricopa County Sheriff

JN:TAN/jm



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March 7, 2006

The Honorable Donald H. Rumsfeld
Secretary of Defense
Office of the Secretary of Defense
1000 Defense Pentagon
U.S. Department of Defense
Washington, DC 20301-1000

The Honorable Michael Chertoff
Secretary of Homeland Security
Office of the Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretaries Rumsfeld and Chertoff:

I write to you jointly regarding the operational control of the Arizona-Mexico Border, and the Homeland Security implications resulting from its current condition. Specifically, this letter is a request for additional Federal attention at the border through the formal approval of funding for the use of the Arizona National Guard in a supportive role to secure our border.

I have met, corresponded, and exchanged memos with each of you personally, or with your respective Departments, on this issue. There is no problem more compelling affecting the State of Arizona today than illegal immigration. As a State, we are dependent upon the Federal government, and particularly upon your Departments, to provide the strategy, resources, and dedication to secure our border.

The United States can regain operational control of this border through a common understanding of the issues at hand, a renewed commitment to the Federal responsibilities of this mission, and the immediate allocation by your Departments of resources necessary to fulfill these commitments.

Current Federal border control policy in the Southwest has funneled illegal immigrant traffic into Arizona, and has left the Border Patrol's Tucson Sector as the primary gateway for illegal crossings along the entire United States-Mexico border. As a result of this paralyzed policy, there are more undocumented immigrants entering the

country through Arizona than through any other state in the nation. Yet, while over 50% of all illegal crossings from the United States-Mexico Border are through my State, only 27% of the Border Patrol officers, nationwide, are stationed in Arizona sectors.

Despite the increase in Department of Homeland Security resources to this area, Congress has still failed to appropriate even the minimum levels of funding for border security that were recommended by the 9/11 Commission and authorized by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004.

I have recently been made aware that the Department of Defense intends to decrease National Guard presence by further cutting critical Guard resources at the border currently acting pursuant to the Arizona National Guard Counter-drug Support Plan, authorized by Section 112 of Title 32. Remarkably, while Arizona suffers a decrease in funding, the United States Army has placed two Stryker Units in New Mexico, with another on the way, to assist in border-related matters. In addition, the Arizona Department of Public Safety continues to receive sporadic cooperation, at best, from Immigration and Customs Enforcement ("ICE") in responding to investigations involving unauthorized migrants.

Arizona is doing its part. Last year, I declared a state of emergency for all of the Arizona border counties, thereby releasing over \$1.5 million in State funds to help combat the effects of illegal immigration in border communities. Furthermore, this January, I sent a \$100 million border security package to our State legislature to strengthen local jurisdictions along the border, increase the region's law enforcement personnel, allocate funds for the purchase of border security equipment and technology, and combat the immigration-related crimes Arizona faces on a continual basis.

Although the State of Arizona should not be a financial or operational substitute for the Federal Government's responsibility to secure our borders, we are nonetheless willing to further assist you in this important Federal commitment. We can provide operational support through the expertise and particularized mission capabilities of the National Guard forces. Specifically, in my December 30, 2005 letter to Secretary Rumsfeld, I delineated a series of activities that the Arizona National Guard could perform within a supportive capacity in order to assist the Federal Government in securing our border. These National Guard functions would be subject to the Department of Homeland Security's Southwest border strategy, and would further take direction from that agency. Moreover, there are numerous sources of statutory authority by which to effectuate such border security activities by the National Guard, as is evidenced by the following:

- Augmentation of current Title 32 Section 112 activity in Arizona through the Drug Interdiction strategy (a strategy that notes that the "proven ease of illegal entry into the United States via the Arizona/Mexico international border may actually be the most dangerous threat included in this state plan");

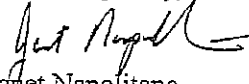
- Title 32, Section 502(f) that allows a member of the National Guard to perform "training or other dut[ies]" in addition to their regularly prescribed functions. Historically, this Section has been liberally applied, and was implemented in the Gulf Region in response to Hurricane Katrina;
- The execution of a Memorandum of Agreement ("MOA") between the Department of Homeland Security and the Department of Defense analogous to the 2002 MOA that was executed between the Immigration and Naturalization Service and the Department of Defense regarding the protection of the Canadian and Mexican Borders;
- Chapter 9 of Title 32 gives the Secretary of Defense the discretion to provide Federal funds to a governor to employ National Guard assets to conduct "homeland defense activities." The statute defines those activities as those that are "undertaken for the military protection" of a "domestic population" of the United States that is "critical to national security." 32 U.S.C. sec. 901.

For further reference, I have attached a memorandum addressing the legal avenues outlined above. (see attached) Clearly, there exists ample legal authority by which to effectuate this request, and there can be no question that, operationally, the Guard can be of invaluable assistance. As stated in a recent letter to my office from the Department of Homeland Security: "the use of the National Guard troops allows ICE and CBP to place more personnel in critical front-line law enforcement roles and we encourage this cooperation."

Returning operational control to our Southwest border is a fundamental Homeland Security mission. Therefore, I respectfully request the Department of Homeland Security to advise formally the Department of Defense as to the necessity of implementing the Arizona National Guard to assist the Federal Government in its mission in Arizona to secure our border, and further that the State of Arizona be reimbursed for these National Guard activities.

Thank you for your cooperation in working to secure the Arizona-Mexico Border. I respectfully request your immediate attention to this matter.

Yours very truly,


Janet Napolitano
Governor

JN:DKB



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April 25, 2006

The Honorable Donald H. Rumsfeld
Secretary of Defense
U.S. Department of Defense
Washington, D.C. 20301-1000

The Honorable Michael Chertoff
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretaries Rumsfeld and Chertoff:

I am in receipt of the letter from your respective agencies dated April 17, 2006, and I thank you for your attention to this matter. Pursuant to the representations made within, your agencies are amenable to re-examining the need for uniform funding increases for the successful implementation of current Department of Defense Drug Interdiction Programs (32 U.S.C. § 112).

Your agencies, however, continue to emphasize that any additional funding pursuant to Section 502(f) and/or Chapter 9 of the United States Code would be inappropriate under these circumstances in light of their intended purpose. I again respectfully disagree with such an interpretation of the intended functions of these various statutes, and maintain that the Secretary of Defense has the discretion to authorize funding and they are proper vehicles by which the Southwest border-states may receive federal funding to address their dire need for assistance in security efforts along the United States-Mexico border.

Please be assured that I fully recognize and appreciate the efforts listed within your letter that currently provide support to the Tucson and Yuma Border Patrol Sectors. I feel strongly that these efforts, coupled with specific supplementary missions by the National Guard would serve to bring about a comprehensive and synchronized border security strategy. Although the legislative history of Section 502(f) indicates that the statute was specifically designed as a vehicle by which to expand the operational duties of the National Guard under the control of a Governor for anything other than their "general duties," your letter indicates that the Department of Defense is not prepared to construe Section 502(f) broadly. We agree that such a broad application is not necessary, and accordingly intend, as your agencies have acknowledged, that activities funded under this provision be limited to "specific missions, normally involving unique military or technical skills, performed for a defined period of time, in support of a civilian law enforcement agency."

The Honorable Donald Rumsfeld
The Honorable Michael Chertoff
April 26, 2006
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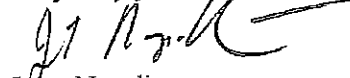
We have reevaluated Arizona's current counter-drug State Plan and have determined it to be grossly under-funded. Annual increases in operating costs coupled with stagnant funding levels have left the Counter-Drug Program, as well as the Joint Counter Narco-Terrorism Task Force (JCNTF), inadequately funded for several years, and have ultimately caused a drastic and continuous reduction in force. Consequently, the program is currently at its lowest personnel levels of one hundred sixty (160). Yet, in spite of these staggering deficiencies, the need for additional narco-terrorism and human smuggling support continues to grow annually within this post 9-11 climate, wherein criminal activities are increasingly associated with the international border.

As proposed by your letter, please consider this my formal request that Arizona JCNTF be allocated an additional six million dollars (\$6,000,000) above the intended target budget of approximately nine million dollars, specifically \$9,143,206, for fiscal year 2007. Upon your approval, this increase should become the permanent funding level for Arizona's JCNTF, and adjustments for inflation should be incorporated each year thereafter. These additional monies will provide the Arizona National Guard with the ability to return to an acceptable level of two hundred sixty (260) soldiers/airmen, and allow them to support the local, state, and federal law enforcement agencies charged with protecting both the State of Arizona and the international border of the United States of America.

We understand this request is consistent with the Department of Defense's Program Budget Decision (PBD) 095, dated December 11 2001, which provides that the National Guard Counterdrug Program should maintain an average end strength of no less than 2,763. Since 1999, increases to the Presidential Budget have not kept pace with the actual cost of inflation and pay raises. As a result, the current Presidential Budget will only fund an average personnel level of 2,108. Unfortunately, this loss of personnel is making it tougher for all of the Southwest border states to fight increased drug trafficking. Increasing Arizona's allotment as we suggest would help the Department of Defense conform with PBD 095.

I ask for your immediate consideration of and action on this request in light that my original request has been pending for four months and your current response arrived two months after our discussions in Washington, D.C. Please have your staffs contact Arizona National Guard Adjutant General, David Rataczak, at (602) 267-2710 with any questions and further information on this request.

Very truly yours,



Janet Napolitano
Governor



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January 13, 2006

The Honorable Michael Chertoff
Secretary
United States Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

Thank you for your continued willingness to discuss the necessary measures in securing the Arizona-Mexico border. Your input is always appreciated, and I hope to speak with you again soon regarding immigration enforcement in my state.

As we are both well aware, the immigration enforcement decisions made by state leaders and the directors of federal agencies are predicated upon the pertinent information we receive. I am looking to increase the efficiency of information exchange between my administration and the U.S. Customs and Border Protection agency.

Under 2004's Immigration and Customs Enforcement's hiring freeze, 50 Operation ICE Storm agents were removed from active duty in Arizona. From my understanding, these positions continue to be vacant. This is troubling in that the agents played a vital role in Arizona's anti-smuggling efforts and their vacancies heighten my state's need for timely USCBP information.

In order to better allocate existing resources, I therefore respectfully request monthly Arizona-specific USCBP and U.S. Border Patrol updates. Information that would most benefit Arizona's efforts includes, but is not limited to:

- Arizona immigration apprehensions in the Tucson and Yuma Sectors including both the total number of Mexican nationals and OTMs (with country of origin) apprehended.
- The number of border crossing deaths in the desert.
- The number of confrontations and assaults on USBP agents.
- The number of Arizona border enforcement hours by sector.
- Changes in the number of USCBP and USBP agents in Arizona.
- Any information or reports regarding the shifting patterns of illegal immigration activity in Arizona.
- Drug confiscation statistics in and between all Arizona Ports of Entry.

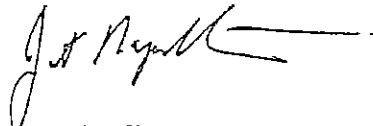
The Honorable Michael Chertoff
January 13, 2006
Page Two

Furthermore, next week I will be sending a \$100 million border security package to our state legislature. My intention is to strengthen the local jurisdictions along the border, increase the region's law enforcement personnel, allocate funds for the purchase of border security equipment and technology and combat the immigration-related crimes we are faced with on a continual basis. As you know, I have also asked Secretary of Defense Rumsfeld to invoke Article 32 of the Federal Code, which allows the federal government to pay for Arizona to station the National Guard in supportive roles to help secure our border. Such financial support would allow the Guard to expand its border presence while further enforcing the rule of law.

Again, I appreciate your time and willingness to discuss the most effective measures to be implemented along the southwest border. I hope you will assist my staff by facilitating the most efficient conduit of information exchange between Arizona and the U.S. Customs and Border Protection agency.

Please feel free to have your staff contact Frank Navarrete, the Director of the Arizona Office of Homeland Security with any questions regarding my request. Director Navarrete can be reached at 602-542-7052 and fnavarrete@az.gov.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano", with a long horizontal line extending to the right.

Janet Napolitano
Governor



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August 1, 2007

The Honorable Michael Chertoff, Secretary
United States Department of Homeland Security
Washington, DC 20528

The Honorable Robert M. Gates
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Chertoff and Secretary Gates:

Prior to the July 1st transition plan for Operation Jump Start, Governor Bill Richardson and I wrote to you voicing our objections to the planned reduction in National Guard presence at the Southwest Border. I continue to express my concerns with this transition and believe it is imperative that we continue to maintain a strong presence at the border to ensure that our collective mission to reduce the level of human smuggling and criminal activity continues into the future.

According to recent statistics my office received from the United States Border Patrol Tucson Sector, that Sector has witnessed a steady increase in apprehensions since April of this year. In July of 2007 apprehensions are set to increase by 52% from apprehensions in July of 2006. Disturbingly, there has only been a reported 2.4% overall decrease in 2007 for border crossing apprehensions in the Tucson Sector. Obviously, these numbers show that Arizona remains a problematic border in the Southwest region and the long-planned drawdown in personnel and patrol is premature.

I do not doubt that, overall, Operation Jump Start has made real progress and I am very proud of the tremendous service conducted by the men and women of the Arizona National Guard, many of who already performed missions abroad in the Middle East for our country. As part of Operation Jump Start, the Arizona National Guard has provided over 6000 hours of aerial observation to enhance the Custom and Border Patrol's coverage, constructed new roads, fencing, vehicle barriers, installed lighting and electrical lines, and utilized approximately 40 entry identification teams for early

The Honorable Michael Chertoff
The Honorable Robert M. Gates
August 1, 2007
Page Two

observation of crossers. I have also been pleased to learn that 870 additional Border Patrol agents have been added to the Arizona Border Sectors since April 29, 2006.

Nonetheless, the statistics are telling and strongly indicate that Arizona continues to be a prime crossing location into the United States turning Arizona cities and towns, especially those in the Tucson Sector, into transit hubs for human and drug smuggling organizations.

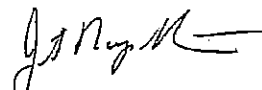
The drawdown of Operation Jump Start's strength level is ill-timed and should be halted and reexamined.

In addition, as I have indicated to Secretary Chertoff in person, I reiterate my request that any transition plan for Operation Jump Start have no impact on the program's distribution of force, so that the current 40% of the operation's resources are dedicated to Arizona, where approximately 50% of the crossings occur. Obviously, we believe that the distribution of force should match the influx, but at the minimum, it should not be reduced from the first year of the program.

I respectfully request that your respective departments implement a contingency plan to address the marked increased in apprehensions in Arizona during the last few months. I would also request that you continue to work in coordination with our state, Tribal and local law enforcement authorities to ensure that a contingency plan addresses our regional needs and requirements.

As always, I look forward to your prompt response.

Yours very truly,



Janet Napolitano
Governor

CC: Chief David Aguilar, Office of Border Patrol
Lt. General H. Steven Blum



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February 20, 2007

The Honorable Michael Chertoff, Secretary
United States Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

I recently met with Mexican President Calderon and key members of his Cabinet including Attorney General Eduardo Medina-Mora. One important topic of discussion was the continued illegal importation of methamphetamine into the United States from Mexico. Trafficking of methamphetamine and its precursor chemicals is now a global epidemic.

Federal legislation such as Title VII, the "Combat Methamphetamine Epidemic Act of 2005" and local ordinances have proven successful toward interdicting many of the precursors and essential chemicals used in the production of methamphetamine. Yet, while there has been success in reducing the supply of pseudoephedrine used in illegal labs, Arizona - because of its proximity to Mexico - continues to feel the impact of this dangerous drug on our communities and citizens statewide.

Particularly disturbing is the fact that several countries, including China, continue to use Mexico as a pseudoephedrine conduit to the United States. The Mexican government itself has acknowledged that *four times* the amount of pseudoephedrine needed to treat the country's head colds is transported into Mexico every year. (For example, 21 tons of Chinese pseudoephedrine was recently seized at the Port of Lazro Cardenas.) The excess product quickly finds its way to the United States. These easily available precursor chemicals have fueled the tripling of methamphetamine seizures along United States border ports in the last few years.

One of the most disturbing aspects of the surge in Mexican production of methamphetamine is the legal importation of pseudoephedrine shipped directly into the port at Long Beach, then legally forwarded to Mexico. We indirectly facilitate the production of this illegal drug by allowing its main precursor to be shipped through the United States. This activity must be addressed in a proactive manner.

I ask that you aggressively pursue a plan to develop an enhanced chemical control system that quickly implement more stringent and effective inspections of incoming vessels for


The Honorable Michael Chertoff
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methamphetamine and its precursor chemicals. I believe such a program is possible under the Border Search Authority of U.S.C. Title 19, Sections 1581 and 1582.

In addition, I would be grateful for your continued coordination with our state, Tribal and local law enforcement authorities with the aim of reducing the amount of illegal pseudoephedrine products in the United States.

As always, I look forward to your prompt response. I am available by phone, or in person, to pursue these important matters.

Yours very truly,

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Janet Napolitano
Governor



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August 1, 2007

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The Honorable Robert M. Gates
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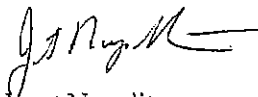
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Yours very truly,



Janet Napolitano
Governor

CC: Chief David Aguilar, Office of Border Patrol
Lt. General H. Steven Blum



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April 25, 2006

The Honorable Donald H. Rumsfeld
Secretary of Defense
U.S. Department of Defense
Washington, D.C. 20301-1000

The Honorable Michael Chertoff
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

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I am in receipt of the letter from your respective agencies dated April 17, 2006, and I thank you for your attention to this matter. Pursuant to the representations made within, your agencies are amenable to re-examining the need for uniform funding increases for the successful implementation of current Department of Defense Drug Interdiction Programs (32 U.S.C. § 112).

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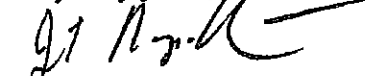
We have reevaluated Arizona's current counter-drug State Plan and have determined it to be grossly under-funded. Annual increases in operating costs coupled with stagnant funding levels have left the Counter-Drug Program, as well as the Joint Counter Narco-Terrorism Task Force (JCNTF), inadequately funded for several years, and have ultimately caused a drastic and continuous reduction in force. Consequently, the program is currently at its lowest personnel levels of one hundred sixty (160). Yet, in spite of these staggering deficiencies, the need for additional narco-terrorism and human smuggling support continues to grow annually within this post 9-11 climate, wherein criminal activities are increasingly associated with the international border.

As proposed by your letter, please consider this my formal request that Arizona JCNTF be allocated an additional six million dollars (\$6,000,000) above the intended target budget of approximately nine million dollars, specifically \$9,143,206, for fiscal year 2007. Upon your approval, this increase should become the permanent funding level for Arizona's JCNTF, and adjustments for inflation should be incorporated each year thereafter. These additional monies will provide the Arizona National Guard with the ability to return to an acceptable level of two hundred sixty (260) soldiers/airmen, and allow them to support the local, state, and federal law enforcement agencies charged with protecting both the State of Arizona and the international border of the United States of America.

We understand this request is consistent with the Department of Defense's Program Budget Decision (PBD) 095, dated December 11 2001, which provides that the National Guard Counterdrug Program should maintain an average end strength of no less than 2,763. Since 1999, increases to the Presidential Budget have not kept pace with the actual cost of inflation and pay raises. As a result, the current Presidential Budget will only fund an average personnel level of 2,108. Unfortunately, this loss of personnel is making it tougher for all of the Southwest border states to fight increased drug trafficking. Increasing Arizona's allotment as we suggest would help the Department of Defense conform with PBD 095.

I ask for your immediate consideration of and action on this request in light that my original request has been pending for four months and your current response arrived two months after our discussions in Washington, D.C. Please have your staffs contact Arizona National Guard Adjutant General, David Rataczak, at (602) 267-2710 with any questions and further information on this request.

Very truly yours,



Janet Napolitano
Governor



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

March 7, 2006

The Honorable Donald H. Rumsfeld
Secretary of Defense
Office of the Secretary of Defense
1000 Defense Pentagon
U.S. Department of Defense
Washington, DC 20301-1000

The Honorable Michael Chertoff
Secretary of Homeland Security
Office of the Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretaries Rumsfeld and Chertoff:

I write to you jointly regarding the operational control of the Arizona-Mexico Border, and the Homeland Security implications resulting from its current condition. Specifically, this letter is a request for additional Federal attention at the border through the formal approval of funding for the use of the Arizona National Guard in a supportive role to secure our border.

I have met, corresponded, and exchanged memos with each of you personally, or with your respective Departments, on this issue. There is no problem more compelling affecting the State of Arizona today than illegal immigration. As a State, we are dependent upon the Federal government, and particularly upon your Departments, to provide the strategy, resources, and dedication to secure our border.

The United States can regain operational control of this border through a common understanding of the issues at hand, a renewed commitment to the Federal responsibilities of this mission, and the immediate allocation by your Departments of resources necessary to fulfill these commitments.

Current Federal border control policy in the Southwest has funneled illegal immigrant traffic into Arizona, and has left the Border Patrol's Tucson Sector as the primary gateway for illegal crossings along the entire United States-Mexico border. As a result of this paralyzed policy, there are more undocumented immigrants entering the

country through Arizona than through any other state in the nation. Yet, while over 50% of all illegal crossings from the United States-Mexico Border are through my State, only 27% of the Border Patrol officers, nationwide, are stationed in Arizona sectors.

Despite the increase in Department of Homeland Security resources to this area, Congress has still failed to appropriate even the minimum levels of funding for border security that were recommended by the 9/11 Commission and authorized by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004.

I have recently been made aware that the Department of Defense intends to decrease National Guard presence by further cutting critical Guard resources at the border currently acting pursuant to the Arizona National Guard Counter-drug Support Plan, authorized by Section 112 of Title 32. Remarkably, while Arizona suffers a decrease in funding, the United States Army has placed two Stryker Units in New Mexico, with another on the way, to assist in border-related matters. In addition, the Arizona Department of Public Safety continues to receive sporadic cooperation, at best, from Immigration and Customs Enforcement ("ICE") in responding to investigations involving unauthorized migrants.

Arizona is doing its part. Last year, I declared a state of emergency for all of the Arizona border counties, thereby releasing over \$1.5 million in State funds to help combat the effects of illegal immigration in border communities. Furthermore, this January, I sent a \$100 million border security package to our State legislature to strengthen local jurisdictions along the border, increase the region's law enforcement personnel, allocate funds for the purchase of border security equipment and technology, and combat the immigration-related crimes Arizona faces on a continual basis.

Although the State of Arizona should not be a financial or operational substitute for the Federal Government's responsibility to secure our borders, we are nonetheless willing to further assist you in this important Federal commitment. We can provide operational support through the expertise and particularized mission capabilities of the National Guard forces. Specifically, in my December 30, 2005 letter to Secretary Rumsfeld, I delineated a series of activities that the Arizona National Guard could perform within a supportive capacity in order to assist the Federal Government in securing our border. These National Guard functions would be subject to the Department of Homeland Security's Southwest border strategy, and would further take direction from that agency. Moreover, there are numerous sources of statutory authority by which to effectuate such border security activities by the National Guard, as is evidenced by the following:

- Augmentation of current Title 32 Section 112 activity in Arizona through the Drug Interdiction strategy (a strategy that notes that the "proven ease of illegal entry into the United States via the Arizona/Mexico international border may actually be the most dangerous threat included in this state plan");

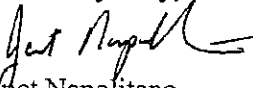
- Title 32, Section 502(f) that allows a member of the National Guard to perform "training or other dut[ies]" in addition to their regularly prescribed functions. Historically, this Section has been liberally applied, and was implemented in the Gulf Region in response to Hurricane Katrina;
- The execution of a Memorandum of Agreement ("MOA") between the Department of Homeland Security and the Department of Defense analogous to the 2002 MOA that was executed between the Immigration and Naturalization Service and the Department of Defense regarding the protection of the Canadian and Mexican Borders;
- Chapter 9 of Title 32 gives the Secretary of Defense the discretion to provide Federal funds to a governor to employ National Guard assets to conduct "homeland defense activities." The statute defines those activities as those that are "undertaken for the military protection" of a "domestic population" of the United States that is "critical to national security." 32 U.S.C. sec. 901.

For further reference, I have attached a memorandum addressing the legal avenues outlined above. (see attached) Clearly, there exists ample legal authority by which to effectuate this request, and there can be no question that, operationally, the Guard can be of invaluable assistance. As stated in a recent letter to my office from the Department of Homeland Security: "the use of the National Guard troops allows ICE and CBP to place more personnel in critical front-line law enforcement roles and we encourage this cooperation."

Returning operational control to our Southwest border is a fundamental Homeland Security mission. Therefore, I respectfully request the Department of Homeland Security to advise formally the Department of Defense as to the necessity of implementing the Arizona National Guard to assist the Federal Government in its mission in Arizona to secure our border, and further that the State of Arizona be reimbursed for these National Guard activities.

Thank you for your cooperation in working to secure the Arizona-Mexico Border. I respectfully request your immediate attention to this matter.

Yours very truly,


Janet Napolitano
Governor

JN:DKB

MEMORANDUM

TO: File

FROM: Legal Department

DATE: March 6, 2006

RE: *Title 32: Statutory Funding Options*

1. Augment Funding for the Current Drug-Interdiction Program Implemented Under Section 112

Federal funding is currently provided to the Arizona National Guard for the implementation of a drug interdiction program in accordance with the provisions of Title 32, Section 112. This section provides that the Secretary of Defense may grant funding to the Governor of a State pursuant to the submission of a "drug interdiction and counter-drug activities plan" that satisfies certain statutory requirements. *Id.* The Secretary of Defense is charged with examining the sufficiency of the drug interdiction plan, and determining whether the distribution of funds would be proper. 32 U.S.C.A. §112(d).

Arizona's current drug-interdiction plan addresses Arizona's threats and vulnerabilities, and specifically delineates operational guidelines to counter these exposed areas. In addition to the specific drug intervention tactics, the plan also recognizes related border issues created by human smuggling and terrain vulnerabilities with respect to the illegal entry of aliens into the United States. Having authorized Arizona's Drug-Interdiction Plan, the Secretary of Defense enabled the Arizona National Guard to engage in border security functions. As such, these border security measures can be further strengthened by simply increasing the funding levels to the "drug-interdiction" program for the purposes of augmenting resources in the border security arena.

2. Independent Implementation of Section 502(f)

Historically, Title 32, Section 502(f), has been used to expand the operational scope of the National Guard beyond their "general duties." Specifically, it allows a member of the National Guard to perform "training or other dut[ies]" in addition to those they are already prescribed to perform. 32 U.S.C.A. §502(f). Where Section 502(f) is devoid of limiting language requiring any specific emergency declarations or mission obligations, the statute can be implemented independently, and interpreted to apply to any "other duty," including use of National Guard forces to bolster border security efforts in the State of Arizona. Such an expansive use was exemplified during the Katrina Disaster Relief Effort. There, National Guard forces provided additional "duties" under this

section, and received federal funding and benefits, while remaining under the authority of the respective Governors. *Hurricane Katrina: DOD Disaster Response*, CRS Report for Congress (09/19/2005).

3. Border Security Funding Established through a Memorandum of Agreement ("MOA") between the Department of Homeland Security and the Department of Defense

In February of 2002, Immigration and Naturalization Services signed a Memorandum of Agreement ("MOA") with the Department of Defense for limited Border Patrol support. This agreement resulted in the Department of Defense financially and logistically supporting National Guard forces on both the Canadian and Mexican borders.

To fund security on the Arizona-Mexico Border, an analogous funding MOA could be established. The Department of Homeland Security ("DHS") would transfer funds to the Department of Defense ("DoD"), who would then provide National Guard assistance to the State of Arizona for security purposes on the Arizona-Mexico Border.

4. Implementation of Chapter 9

Title 32, Chapter 9 of the United States Code authorizes the Secretary of Defense to provide federal funding to a State, under the authority of the Governor of that State, for the use of their National Guard forces if there is a "necessary and appropriate" "homeland defense activity." 32 U.S.C.A. §905. A "homeland defense activity" is statutorily defined as:

"an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States." 32 U.S.C.A. §901.

The Code vests discretion in the Secretary of Defense to determine what constitutes a "homeland defense activity," and further, whether federal funding should be provided to that State pursuant to 32 U.S.C.A. §905. This discretion, awarded to the Secretary of Defense in observance of compliance with Section 903, requires that he promulgate regulations giving State Governors direction and instruction for the implementation of this Chapter. See 32 U.S.C. §903 ("[T]he Secretary of Defense shall prescribe regulations to implement this chapter."). In the absence of Federal direction and regulatory guidance, State Governors seeking Federal relief are forced to speculate as to the scope and reach of this statute. Under such circumstances, the Secretary of Defense must apply the scope of this Chapter liberally.

Furthermore, it is significant that the porous nature of the Arizona-Mexico Border plainly constitutes a "threat or aggression" against the United States pursuant to the Department of Defense's ongoing commitment to the implementation of anti-terrorism tactics. A

2003 House of Representatives Report specifically addresses the need for both the Department of Homeland Security and the Department of Defense to coordinate efforts with regards to:

“such important activities as border defense, use of actionable intelligence, plans for use of the national guard as a first responder, and development of vaccines and various other countermeasures that have been suggested to the committee.” H.R. Rep. 108-106 (2003), 354-355 (emphasis added).

Such an interpretation is supported by the legislative history behind this statute as well as national security rhetoric which collectively emphasize the importance of border defense as a priority for the successful protection of our nation. It is thus utterly incomprehensible to assert that border defense does not fit squarely into the statutory language defining a “homeland defense activity.”

June 30, 2005

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

I am writing to advise you of the joint statement on border security that Governor Bours of Sonora and I issued following the recent Arizona-Mexico Commission (AMC) Plenary Session. Our goal is to work with our respective federal governments to ensure that the Arizona-Sonora border is the safest in North America.

During the Plenary Session, Governor Bours and I were joined by Mexico Foreign Affairs Secretary Derbez. Secretary Derbez informed us of Mexico's strategy and participation in the Security and Prosperity Partnership for North America. We discussed the importance of cooperation between federal and state entities as we continue to explore options to expedite legitimate travelers and trade crossing the border while further enhancing security.

Governor Bours and I are committed to improving security and encouraging economic development in the Arizona-Sonora region. I hope you will consider joining us in our region in the near future.

Should you have any questions, I encourage you to contact me directly, or have your staff contact Mr. Marco A. López, Jr., my Policy Adviser for Mexico and Latin America at (602) 542-1288.

Yours very truly,

Janet Napolitano
Governor

encl. (1)

cc: Dr. Luis Ernesto Derbez, Secretary of Foreign Affairs, Mexico
Eduardo Bours, Governor, State of Sonora
Senator Jon Kyl
Senator John McCain
Congressman Raul Grijalva
Congressman Jim Kolbe
Congressman Ed Pastor

March 28, 2007

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

I write to ask for your support in forming a joint partnership with the State of Arizona and the United States Department of Homeland Security to develop a new, enhanced state driver license and identification card system designed to meet the requirements of the recently passed Western Hemisphere Travel Initiative (WHTI). Arizona shares a border of over 300 miles with Mexico and while this new law is important for our nation's security, it has the potential to disrupt Arizonan's trade and travel. With the WHTI in full effect, an additional expense is created that may prohibit families from traveling requiring across the Arizona-Mexico border.

I have asked the Arizona Department of Transportation and the Arizona Motor Vehicle Division to complete a feasibility study for implementation of an enhanced ID pilot program at the Arizona-Mexico border; the pilot would mimic the border crossing proposal that was recently implemented in the State of Washington. This program would enhance the standard of the Arizona driver license and identification card to meet the requirements of the WHTI.

This enhanced driver license/identification card would:

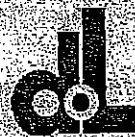
- Be a voluntary program;
- Be slightly more expensive than a standard driver license or card;
- Require proof of citizenship, identity, and residence; and
- Be more secure than a standard license, and similar in security features to a United States passport.

In the upcoming weeks, I will prepare and submit a complete border-crossing proposal for enhancement of the state issued driver license/identification card to the United States Department of Homeland Security.

Yours very truly,

Janet Napolitano
Governor

JN:ml



WASHINGTON STATE DEPARTMENT OF

LICENSING

Washington State Border Crossing Proposal: Enhanced State Driver License

Providing a single, cost effective
document that provides for the
travel needs of Washington residents.

dol.wa.gov

Washington State Border Crossing Proposal: Phase II — Enhanced State Driver License



Border crossing at Blaine, WA.

The tragic aftermath of the 9/11 terrorist attacks required thoughtful and immediate improvements to our nation's border security. One major change affecting many in the United States is the federal Western Hemisphere Travel Initiative. As it stands, this law requires a passport or other federally approved identification or proof-of-citizenship document for all travel into the United States, including U.S. citizens. This requirement will be in place for all travelers by June 2009.

This new law is important for our nation's security. However, this major change has the potential to disrupt Washington State's robust trade and travel relationships with Canada. Currently, our citizens can cross the Canadian border and return to the U.S. using a driver license or birth certificate as identification.

The State of Washington proposes developing a document sufficient to show identity and citizenship for crossing the U.S./Canadian border. This document would be based on the standard Washington State driver license or identification card, but would be enhanced to meet the requirements of the Western Hemisphere Travel Initiative (WHTI).

This enhanced driver license would:

- ☛ be a voluntary program;
- ☛ be slightly more expensive than a standard license;
- ☛ require proof of citizenship, identity, and residence; and
- ☛ be more secure than a standard license, and similar in security features to a U.S. passport.

Background

In December 2005, Premier Gordon Campbell of British Columbia and Governor Chris Gregoire of Washington State jointly wrote President Bush to discuss concerns about the possible negative impacts of implementing WHTI. In 2010, Olympic and Paralympics Winter Games will take place in Vancouver, British Columbia. Because of the economic and cultural benefits related to these games, Governor Gregoire and Premier Campbell expressed concern that costly identification requirements could dissuade families and travelers from crossing the U.S./Canadian border.

Governor Gregoire and Premier Campbell met again in June 2006. They co-signed a letter to President Bush and Prime Minister Harper restating that a passport requirement could significantly impact tourism between the two countries.

During an Executive Session of the Pacific Northwest Economic Region (PNWER) Conference held in Edmonton, Alberta on July 18, 2006, Secretary Chertoff expressed a willingness to consider passport-equivalent documents to meet the WHTI requirements. On November 13, 2006, Washington State sent Secretary Chertoff Phase One of its Border Crossing proposal. Phase 1 pilots the use of mobile wireless scanning technology to verify drivers' license information and cross-check criminal justice databases.

Proposal

Washington State's Phase 2 will produce an Enhanced Washington Driver License or Identification Card (WDL/ID) that will show the applicant's U.S. citizenship, identity, and state residence. Technology will be used to help validate the authenticity of foundational documents and to establish citizenship and identity as prerequisites for issuing the enhanced driver license.

The Enhanced WDL/ID will be a voluntary program. To take part in the program, all applicants must be United States citizens by birth or naturalization. Participants can have a certified birth certificate (or other passport-equivalent foundational documents) scanned and the document's security features electronically authenticated. An enhanced driver license will not be issued if Washington State is unable to authenticate the participant's documents. The applicant will be referred to the State Department for a passport.

The driver license is a nationally accepted means of identification. Therefore, Washington State proposes the use of an Enhanced WDL/ID card as an acceptable alternative document for border crossing along the U.S. (Washington) and Canadian (British Columbia) borders. An Enhanced WDL/ID card would allow its owner to carry a single document to show citizenship and identity at a significant cost-savings to the applicant. This proposal also satisfies the intent of the Secretary's remarks at the July 2006 PNWER Conference and establishes a viable program that can serve as a system easily mirrored by other states.

To implement this phase, we will do the following:

1. Create new standards to establish the individual's citizenship and reaffirm identity, as well as ensure the individual meets qualifications for an Enhanced WDL/ID card.
2. Develop policies and procedures to implement the enhanced driver license enrollment process and use document scanners and document validation technology:
 - All foundational documents will be electronically authenticated, scanned, imaged and stored for auditing purposes.
 - Applicants' Social Security Number will be verified with the Social Security Administration.
 - Only staff that has undergone the American Association of Motor Vehicle Administrators (AAMVA) Advanced Fraud Document Recognition Training will process the Enhanced WDL/ID.
 - For Washington-born applicants, the Washington State Department of Licensing will be able to electronically validate the birth certificate with the Washington State Department of Health. (When available, we will validate all U.S. birth certificates by the American Association of Motor Vehicle Administrators (AAMVA), Electronic Verification of Vital Events Records (EVVER) System.) Until the EVVER system is available, we will use technology to scan and authenticate the security features of other documents.
 - The National Association of Public Health Statistics and Information Systems (NAPHISIS) are working in collaboration with the U.S. states and territories on improving the security surrounding birth certificates. NAPHISIS is working with the federal government on the proposed rules mandated by Congress under the Intelligence Reform Act of 2004. These rules will require states to achieve a level of security that will meet federal standards. States meeting these standards can apply for and receive certification, which will allow the state's birth certificates to be accepted by federal agencies, such as Social Security Administration, the U.S. military, and U.S. passport.

- Additional security measures will be accomplished by identifying strategic locations to issue the voluntary Enhanced WDL/ID. This will allow for better concentration and development of the appropriate staff skills and oversight.
- We will scan proof-of-identity documents (driver licenses, military identification cards, etc.) via wireless technology.
- We will issue a permanent license from a central, secure location.
- Current WDL/ID card security features include embossed seals, watermarks, ultraviolet and fluorescent light verification features, security laminations, and micro printing.
- The State currently captures a digital photo of all applicants. The State recognizes that DHS may require inclusion of additional security features as a condition of proceeding. We are open to discussing those features with DHS.
- Washington recognizes the importance of free-flowing borders with minimal crossing times and the need for any alternative document to facilitate, and not hamper, border crossing. Washington State's driver license and identification card contains a 2-D bar code that is a secure and machine-readable document.

Proposal Objectives, Outcomes and Benefits

- Demonstrate feasibility of establishing requirements and processes acceptable to Washington State, British Columbia, and the federal border protection agencies.
- Demonstrate the use of a Washington State-issued driver license or ID card to maintain the level of trade and tourism to Washington and British Columbia citizens.
- Improve the capability of the CBPA to quickly verify identity and citizenship at Washington State and British Columbia borders.
- Increase the overall level of security by requiring consistent foundational documents.
- Significantly improve verification process of identity.
- Strengthen the current driver licensing process via legislative changes by establishing citizenship requirements supported by electronic authentication of foundational documents.
- Establish a level of confidence and security in the WDL/ID card as comparable or equal to the Passport, or P.A.S.S. Card (passport card).
- Test technology designed to detect fraudulent licenses and to query existing persons of interest databases.

More Information

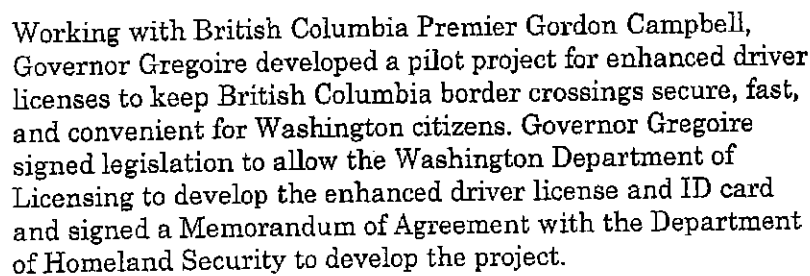
For more information, please contact:

Liz Luce, Director
 Washington State Department of Licensing
 (360) 902-3932
lluce@dol.wa.gov

Becky Loomis, Assistant Director
 Department of Licensing, Driver Services
 (360) 902-3850
bloomis@dol.wa.gov



Governor Chris Gregoire has formed a partnership with the U.S. Department of Homeland Security to develop new, enhanced state driver licenses and identification cards. These enhanced licenses and ID cards are being designed to meet the requirements of the recently passed Western Hemisphere Travel Initiative (WHTI). This new law would require a passport to cross the border, an additional expense that may prohibit families from traveling.



- The enhanced driver licenses and ID cards will keep the Washington border safe and secure while still allowing Washingtonians to move quickly through security.
- They will be voluntary for Washington residents.
- The Washington Department of Licensing will begin issuing the enhanced cards in January 2008.
- They will cost slightly more than a standard license, but significantly less than a passport.
- The cards will require verified proof of citizenship, identity, and residence.
- They will be more secure than a standard license, with security features similar to a U.S. passport.
- The cards will look similar to current licenses and ID cards, but will have an icon on the front that indicates the holder is a U.S. citizen.
- The cards will have technology, required by the federal government, to facilitate rapid identification checks at border crossings, similar to chips already imbedded in U.S. passports.

Media contacts:

Governor's Office (360) 902-4136
Department of Licensing (360) 902-3608

dol.wa.gov



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
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March 11, 2008

The Honorable Michael Chertoff
United States Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

From the many times we have met and corresponded, I know that we share a firm commitment to securing America's borders as a necessary part of broader comprehensive immigration reform. However, I am dismayed by recent reports indicating continuing problems with Project 28 – the “virtual fence” project, which is located in my State. These reports suggest that the broad implementation of high-tech security measures across our southern border is now many years away.

Yet, at the same time this delay was abruptly announced, we continue to remove and eventually terminate a successful program using the National Guard at our Border – Operation Jump Start.

In light of this newly announced delay, I urgently request that you reconsider the draw-down of Operation Jump Start, and instead retain National Guard personnel strength in numbers necessary to maintain the hard-won improvements in operational control of the international border.

As you fully know, in testimony before Congress last week, the Government Accountability Office confirmed that Project 28 is plagued with serious flaws that will require a redesign of the system. I appreciate the Department's dedication to resolving these problems and working toward a functional high-tech border security component. I also appreciate, as you have said, that the prototype Project 28 “virtual fence,” as it existed, was of some value to Border Patrol officers. Nonetheless, the significant delays the project faces are of great concern. Your office has announced the system cannot be operational before 2011.

Real solutions to fix our broken borders cannot wait that long. Human and drug smuggling rings continue to thrive in Arizona, crossing our border and using our cities as major hubs to transport crossers throughout the country. While we wait for real progress on the “virtual fence,” border communities in Arizona will continue to be strained by the millions of dollars in costs they must absorb due to the state of border security.

The Honorable Michael Chertoff
March 11, 2008
Page 2

Also of concern is the timing. It is disturbing that, even though you and I met in Washington, D.C. in February, neither the State, nor apparently any of the local or tribal governments affected by Project 28, was informed by the Department of looming delays. Instead, our notification came from viewing news accounts of subcommittee hearings. The communities affected by Project 28 deserve more consideration and a greater opportunity to provide feedback.

Project 28 was a critical part of the Department's plan to bolster border security in the absence of action by Congress on comprehensive federal immigration reform. With its delay, it is now critical to maintain the strength and presence provided by Operation Jump Start.

Operation Jump Start has been highly effective. Since its launch in June 2006, the National Guard has flown 11,000 aviation flight hours, over 150 Customs and Border patrol officers were returned to law enforcement duties, and miles of high density lighting, vehicle barriers, road improvements, and fencing have been completed. When National Guard assistance was at its peak, data showed marked improvements in Border Patrol apprehensions.


Clearly, the support provided by Operation Jump Start has been invaluable. But in spite of objections from Arizona and other states, which must deal with the day-to-day issues associated with illegal immigration, the number of National Guard troops assigned to Operation Jump Start was cut in half in September 2007. A further drawdown of forces is slated to begin in April 2008 in anticipation of the current projected end date of July 15, 2008.

I have always believed that drawing down Operation Jump Start would be a mistake. Now that promised improvements in border security measures will not come to pass anytime soon, the federal government has no excuse to scale back the program. Common sense dictates that the drawdown should stop, and that a continued high National Guard presence should be maintained.

If, indeed, the drawdown continues, it is prudent to ask: what other steps will the Department take to shore up border security in lieu of the "virtual fence?"

We both know that border security is at the heart of the wellbeing of border communities, border states, and the nation as a whole. I look forward to your prompt reply regarding what measures the Department of Homeland Security will be taking to strengthen security on the Arizona border to compensate for expected improvements to high-tech enforcement that will not come nearly soon enough.

Yours very truly,



Janet Napolitano
Governor